

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Richardson	Team: Squad #7	CCRB Case #: 201803645	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/02/2018 3:00 PM	Location of Incident: Corner of Nostrand Avenue and Hawthorne Avenue; inside the 71st Precinct Stationhouse	Precinct: 71	18 Mo. SOL 11/2/2019	EO SOL 11/2/2019	
Date/Time CV Reported Wed, 05/09/2018 2:15 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/09/2018 2:15 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT William Diab	00000	940125	WARRSEC
2. DTS Elijah Boyle	01226	950096	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Ohalloran	12875	956137	071 PCT
2. POM Anderson Thimote	16504	957399	071 PCT
3. POM Cory Tizzio	05792	957220	069 PCT
4. SGT Radames Sierra	4655	939465	071 PCT
5. POM John Mcmanus	15975	949309	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT William Diab	Abuse: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab stopped § 87(2)(b)	
B.DTS Elijah Boyle	Abuse: At the corner of Nostrand Avenue and Hawthorne Avenue, Detective Elijah Boyle frisked § 87(2)(b) Alphonse.	
C.LT William Diab	Abuse: At the corner of Nostrand Avenue and Hawthorne Avenue, in Brooklyn, Lieutenant William Diab stopped § 87(2)(b)	
D.LT William Diab	Abuse: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab interfered with § 87(2)(b)'s use of a recording device.	
E.LT William Diab	Abuse: At an unknown location, Lieutenant William Diab deleted information on § 87(2)(b)'s electronic device.	

Officer(s)	Allegation	Investigator Recommendation
F.LT William Diab	Abuse: At the corner of Nostrand Avenue and Hawthorne Avenue, in Brooklyn, Lieutenant William Diab refused to provide his name to § 87(2)(b)	
G.LT William Diab	Abuse: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab damaged § 87(2)(b)'s property.	
H.LT William Diab	Abuse: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab threatened to arrest § 87(2)(b)	
I.LT William Diab	Abuse: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab threatened to arrest Individuals.	
J.LT William Diab	Off. Language: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab made remarks to § 87(2)(b) based upon race.	
K.LT William Diab	Off. Language: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab made remarks to Individuals based upon race.	
L.DTS Elijah Boyle	Abuse: Inside the 71st Precinct stationhouse, Detective Elijah Boyle strip-searched § 87(2)(b)	

Case Summary

On May 9, 2018, § 87(2)(b) filed this complaint with the CCRB via phone. On May 17, 2018, the undersigned became aware that on May 3, 2018, § 87(2)(b) called the IAB Command Center generating IAB Log No. 2018-17592, to file a complaint about the same incident. The complaint was forwarded to the CCRB on May 14, 2018.

On May 2, 2018, at approximately 3:20pm, Lt. William Diab, Sgt. Radames Sierra, Det. Elijah Boyle and PO Michael O'Halloran, all of the 71st Precinct, observed § 87(2)(b) standing in a group of approximately ten individuals near the corner of Nostrand Avenue and Hawthorne Street, in Brooklyn. Lt. Diab observed § 87(2)(b) bent over and rolling dice. Lt. Diab informed the aforementioned officers that they were going to approach him to conduct a further investigation (**Allegation A; Abuse of Authority, § 87(2)(g)**). Upon approach, Det. Boyle observed a bulge in the front area of § 87(2)(b)'s pants area. Det. Boyle then frisked § 87(2)(b) (**Allegation B; Abuse of Authority, § 87(2)(g)**). While interacting with § 87(2)(b) § 87(2)(b) approached closely to the officers with an outstretched hand and a cell phone in it, recording the incident. Lt. Diab approached § 87(2)(b) and told him to back up several times. After a brief verbal exchange, Lt. Diab asked § 87(2)(b) to produce his identification. § 87(2)(b) failed to produce it and was then placed in handcuffs, with Lt. Diab taking his cell phone from his hands and allegedly deleting the information that was on his cell phone (**Allegations C, D, and E; Abuse of Authority, § 87(2)(g)**). § 87(2)(b) then asked Lt. Diab for his name and shield number several times but Lt. Diab did not provide them (**Allegation F, Abuse of Authority, § 87(2)(g)**). Lt. Diab then allegedly kicked over § 87(2)(b)'s Bluetooth speaker which was standing upright on the ground in the area (**Allegation G, Abuse of Authority, § 87(2)(g)**). Lt. Diab then allegedly stated, "Lock all these niggas up" (**Allegations H, I, J, and K Abuse of Authority and Offensive Language, § 87(2)(g)**). Upon arrival at the 71st Precinct stationhouse, § 87(2)(b) was lodged into the holding cells. As he was being lodged, Det. Boyle allegedly reached inside the front waistband area of § 87(2)(b)'s jeans and pulled his jeans, thermal leggings and underwear away from his body thereby exposing his penis and testicles. Det. Boyle then looked down into this area and observed § 87(2)(b)'s penis and testicles for approximately five-ten seconds (**Allegation L, Abuse of Authority, § 87(2)(g)**). After approximately five hours, § 87(2)(b) was released with a § 87(2)(b) summons.

There was video footage obtained in regards to this incident. Cell phone footage recorded by and obtained from § 87(2)(b) and also 71st Precinct stationhouse footage was obtained by the CCRB directly from the NYPD.

Findings and Recommendations

Allegation A: Abuse of Authority: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab stopped § 87(2)(b)

§ 87(2)(b) was uncooperative with the investigation and did not provide a sworn statement.

On May 2, 2018, at approximately 2:45pm, § 87(2)(b) was hanging out with approximately three of his friends on the corner of Nostrand Avenue and Hawthorne Street in Brooklyn in front of

A&B Fruits Market Deli. There was another group of approximately five individuals standing approximately five feet away from them in front of 292 Hawthorne Street, an apartment building. He and his friends were not loud, and there was no music playing, no drinking alcohol or smoking marijuana. Approximately fifteen minutes later, at 3:00pm, § 87(2)(b) observed a black Ford Taurus slowly drive up Hawthorne Street, and further observed an officer, identified via the investigation as Lt. Diab, seated in the front passenger seat looking at both groups of civilians and then pull over. While still seated in the vehicle, Lt. Diab asked § 87(2)(b)'s group, "What's up, are you guys alright?" § 87(2)(b) stated, "Yea we good officer. What's the problem?" Lt. Diab then exited the vehicle, and approached one of § 87(2)(b)'s friends, identified via the investigation as § 87(2)(b). § 87(2)(b) then pointed his cell phone at Lt. Diab and began to record the situation. § 87(2)(b) did not provide any additional details in regards to the interaction between § 87(2)(b) and Lt. Diab because § 87(2)(b) immediately asked Lt. Diab, "What you doing, what's going on?", and Lt. Diab responded by leaving § 87(2)(b) and approaching § 87(2)(b) (Board Review 01)

§ 87(2)(b) stated on May 2, 2018, at approximately 3:00pm, she was standing in front of 292 Hawthorne Street, with two-three male friends of hers. They were talking to each other. There was also another group of approximately ten males a few feet away, near the first side window of A&B Fruits Market Deli who were just talking as well. There was no drinking alcohol, smoking marijuana, gambling, or loud music playing. § 87(2)(b) observed a dark colored four door sedan drive slowly up Hawthorne Street and pull over in front of where they were standing. § 87(2)(b) looked at the vehicle, and observed the front and rear passenger side windows down. § 87(2)(b) recognized some of the men inside the vehicle from prior interactions and stated to her friends, "Oh, that's the boys." Lt. Diab looked at them for approximately less than five seconds, the vehicle then parked on the corner and the officers exited the vehicle with Lt. Diab approaching § 87(2)(b). Lt. Diab asked § 87(2)(b) for identification and he responded, "What do you want my I.D. for." As this was happening § 87(2)(b) and her friends as well as the other males standing in the area began to walk closer to the officers. § 87(2)(b) took out her phone and began to record the incident. Immediately after § 87(2)(b) responded, § 87(2)(b) took out his phone as well, began to record, and stated, "Why are you asking him for his I.D.", along with other members of the crowd. Lt. Diab approached § 87(2)(b) and told him repeatedly to get back. (Board Review 02)

While driving on Nostrand Avenue, Lt. Diab observed a group of at least ten individuals standing near the corner of Hawthorne Street and Nostrand Avenue congregating around § 87(2)(b). § 87(2)(b) was inside the group bent over shaking dice in his hands and rolling the dice on the ground. Lt. Diab observed this for a couple of seconds. Because of this observation Lt. Diab believed § 87(2)(b) to be gambling. Lt. Diab did not observe any currency. Lt. Diab also observed this same group of individuals appear to be drinking alcohol in that there were Hennessey bottles on the floor in the immediate vicinity and people had cups in their hands. However, he couldn't articulate who or how many people or if § 87(2)(b) was one of these people. Lt. Diab instructed his partners to drive up Hawthorne Street to conduct a further investigation into the gambling. The observation of the dice, Lt. Diab's knowledge of § 87(2)(b) being a member of the Young Savage gang, civilians in the vicinity drinking alcohol, and because of the constant complaints about the location all factored into Lt. Diab's decision to stop and approach § 87(2)(b). Lt. Diab explained that the location is a chronic

311 and 911 drug and shooting prone location which is notorious for drinking, drugs, gambling, violence, and gang activity. Lt. Diab's intent in approaching § 87(2)(b) was to investigate the gambling and to ask him for I.D. A short time later, as they drove up Hawthorne Street, § 87(2)(b) was observed standing in front of one of the windows to A&B Fruits Market Deli just staring at them- no longer rolling dice. When they parked the vehicle, a lot of civilians in the group started to walk off in different directions and Lt. Diab explained that he wasn't going to chase people down for drinking since it's only a violation. He focused his attention on § 87(2)(b). Lt. Diab approached and stated, "Hey, what's up", and, "You got I.D.?" § 87(2)(b) stated, "For what?", and Lt. Diab explained to him that he saw him gambling and that he can't be gambling. § 87(2)(b) stated he was just hanging out but then stated he could send someone to get his I.D. Lt. Diab did not observe any dice or money in the area. Immediately § 87(2)(b) approached within an arm's length to Lt. Diab with his arm extended and a cell phone in it recording the situation. Lt. Diab took his attention off § 87(2)(b) and then focused his attention on § 87(2)(b). Ultimately Lt. Diab used his discretion and decided not to pursue any further police action in regards to § 87(2)(b) and no further investigation was done into the gambling. No dice or currency were recovered from the scene. (Board Review 03)

§ 87(2)(g) Det. Boyle did not see the dice nor currency but saw § 87(2)(b) bent down by a tree at the location picking up his hand from the ground and shaking his hand. When they approached § 87(2)(b) individuals who were already in the vicinity started to gather around the officers, and cell phones were outstretched recording the officers. Det. Boyle explained to § 87(2)(b) why they were stopping him, what they observed and then asked for his I.D. § 87(2)(b) responded, "Why do I have to give you my I.D.? You know who I am." Det. Boyle explained to § 87(2)(b) that he needed his I.D. to obtain his information so he can identify who he is and because he needed the information to fill out a Stop Report. § 87(2)(b) then reached inside his pants and provided his I.D. Det. Boyle did not look for dice or money in the area. Det. Boyle created Stop Report 2018-071-§ 87(2)(b) in regards to this incident § 87(2)(g) (Board Review 04)

PO O'Halloran's testimony was consistent with Det. Boyle's with the following exceptions: When they approached § 87(2)(b) he and Det. Boyle asked him if he was gambling and then asked him for I.D. Simultaneously, PO O'Halloran was looking on the ground to see if there were any dice or currency – but he didn't see any. At this point they explained to him what they observed and why it appeared as if he was gambling. § 87(2)(b) denied that he was gambling but also provided his I.D. § 87(2)(b) was not arrested or issued any summonses since no evidence of gambling was found. (Board Review 05)

Sgt. Sierra testified that as they were driving past the intersection of Nostrand Avenue and Hawthorne Street, Lt. Diab communicated that he observed § 87(2)(b) standing in a group of individuals bent over gambling with dice in his hands. Sgt. Sierra did not look in the area where Lt. Diab was referencing so he did not observe anything. Lt. Diab and other officer, who he didn't recall, approached § 87(2)(b) and asked him for identification. However, Sgt. Sierra stood a couple feet away from them so was not able to provide any details of their conversation. (Board Review 06)

Before a police officer may stop and frisk a person, he must have reasonable suspicion that such person is committing, has committed or is about to commit a crime. We have defined reasonable suspicion as the ‘quantum of knowledge to induce an ordinarily prudent and cautious man under the circumstances to believe criminal activity is at hand. It may not rest on equivocal or ‘innocuous behavior’ that is susceptible of an innocent as well as a culpable interpretation. People v. Brannon, 16 N.Y.3d 596 (Board Review 08) The facts must establish that the officer observed the defendant for a period of time, playing a game of dice with others present and that money was exchanged. People v Rollins, 125 A.D.3d 1540 (Board Review 18)

§ 87(2)(g)

[REDACTED]

Allegation B: Abuse of Authority: At the corner of Nostrand Avenue and Hawthorne Avenue, Detective Elijah Boyle frisked § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) did not testify that they observed § 87(2)(b) being frisked on scene during this incident.

Det. Boyle stated that while they approached § 87(2)(b) he observed a large bulge in his front pants pocket. Det. Boyle stated that the bulge appeared solid and he believed it to be a shape that was closer to the shape of a firearm – however Det. Boyle was not able to articulate the dimensions of the bulge. Because of this observation, and because he was going to be in close proximity to § 87(2)(b) Det. Boyle feared for his safety. Det. Boyle also acknowledged that because he was familiar with § 87(2)(b) through prior arrests for firearms, he feared for his safety. Det. Boyle used his hands and patted the outer layer of § 87(2)(b)'s front pants area down, and confirmed that the bulge was not a weapon. Det. Boyle stated he didn't recall what the bulge was and stated it was either a cell phone or a wallet.

§ 87(2)(g) Lt. Diab could not describe the shape of the bulge but stated he believed it to be a weapon. Lt. Diab explained that he believed the bulge to be a weapon at that time because § 87(2)(b) is a known gang member who has been arrested before for a shooting, the incident location is a prone shooting and gambling location, and because § 87(2)(b) was observed gambling which involves money and stated that from his knowledge and experience a lot of people get shot at gambling locations. After the frisk was conducted, no weapon was found and Lt. Diab stated he believed the bulge was revealed to be a cell phone.

Sgt. Sierra, PO O'Halloran, PO Thimote did not recall observing a frisk to § 87(2)(b)

A frisk is permissible only if an officer possesses a particularized reasonable suspicion that a suspect is armed and dangerous. People v. Gonzalez, 295 A.D.2d 183 (Board Review 19) Before a police officer may stop and frisk a person, he must have reasonable suspicion that such person is committing, has committed or is about to commit a crime. We have defined reasonable suspicion as the 'quantum of knowledge to induce an ordinarily prudent and cautious man under the under the circumstances to believe criminal activity is at hand. It may not rest on equivocal or 'innocuous behavior' that is susceptible of an innocent as well as a culpable interpretation. People v. Brannon, 16 N.Y.3d 596 (Board Review 08) An officer may not ascribe a suspicious nature to an individual simply because the person is observed in a high crime area. People v McIntosh, 96 NY2d 521. (Board Review 09)

§ 87(2)(g)

Allegation C: Abuse of Authority: At the corner of Nostrand Avenue and Hawthorne Avenue, in Brooklyn, Lieutenant William Diab stopped § 87(2)(b)
Allegation D: Abuse of Authority: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab interfered with § 87(2)(b)'s use of a recording device.
Allegation E: Abuse of Authority: At an unknown location, Lieutenant William Diab deleted information on § 87(2)(b)'s electronic device.

With his arm outstretched and recording on his cell phone, § 87(2)(b) asked Lt. Diab, "What you doing, what's going on?" Lt. Diab stated, "What you mean, back up, back up." § 87(2)(b) was standing approximately five feet away from Lt. Diab at this point and at no point walked closer to him. § 87(2)(b) stated, "I'm not doing anything wrong, I'm just recording." Lt. Diab walked towards § 87(2)(b) and then asked for his identification. § 87(2)(b) pulled out his wallet and pulled out his work identification, but Lt. Diab stated, "That's not good enough. I need a state I.D." § 87(2)(b) then looked back into his wallet, but Lt. Diab then stated, "You're taking too long", and grabbed § 87(2)(b)'s right hand, turned him around and placed him in handcuffs. As he was being handcuffed, § 87(2)(b) asked Lt. Diab, "Why are you doing this for. You're bugging out. I was recording" and Lt. Diab responded something along the lines of 'I don't care.' Lt. Diab took § 87(2)(b)'s cell phone from his hand as he was placing him in handcuffs. As this was happening, a crowd of approximately ten-fifteen people had formed around the situation and the group was telling Lt. Diab, "Why are you locking him up for recording? He was the right to do that." § 87(2)(b) acknowledged that the crowd was loud and screaming at the officers during this time because they believed the officers were acting improper. § 87(2)(b) was walked to the police vehicle where he was seated in the rear passenger seat. § 87(2)(b) was ultimately released with a

§ 87(2)(b) summons for failure to disperse. After § 87(2)(b) was given this summons and upon being given his cell phone back, the video he recorded of this incident had been deleted.

§ 87(2)(b) stated that § 87(2)(b) was recording the incident on his phone and Lt. Diab approached him and told him to repeatedly back up. Lt. Diab and § 87(2)(b) then engaged in a brief verbal exchange which resulted in Lt. Diab asking him for identification. § 87(2)(b) could not hear the details of the verbal exchange because there was a lot of loud noise, in that, the crowd including herself gathered near the officers and were screaming at them. As § 87(2)(b) was pulling out identification to show Lt. Diab, § 87(2)(b) yelled the following: “You don’t have to show him no I.D. Don’t give him nothing.” As § 87(2)(b) yelled this, she observed Lt. Diab turn § 87(2)(b) around and put him in handcuffs. Lt. Diab and another officer walked § 87(2)(b) to the police vehicle. § 87(2)(b) was subsequently transported to the 71st Precinct stationhouse. Lt. Diab took § 87(2)(b)’s phone as he was handcuffing § 87(2)(b) and he still had it when § 87(2)(b) was transported to the stationhouse.



Snag it of stop.mp4 (Board Review 11)

Cell phone footage recorded by § 87(2)(b) captured Lt. Diab approaching § 87(2)(b). Lt. Diab can be seen repeatedly telling § 87(2)(b) to back up as § 87(2)(b) records on his cell phone. § 87(2)(b) takes a step back as Lt. Diab continues to tell him to back up. After telling him to back up approximately over five times, Lt. Diab asks § 87(2)(b) for identification. § 87(2)(b) is seen looking in a wallet for identification, and then pulls something out and shows Lt. Diab. Lt. Diab and § 87(2)(b) have a verbal exchange that is unable to be heard due to the narration of § 87(2)(b) during the video. Lt. Diab is then seen placing § 87(2)(b) in handcuffs as § 87(2)(b) holds his phone in his left hand. At the 00:56 mark Lt. Diab can be seen putting the same phone into his rear right pants pocket while he and PO O’Halloran hold § 87(2)(b) and try to handcuff him. After § 87(2)(b) is handcuffed he is then walked to the police vehicle parked in the back of the frame. Throughout the video § 87(2)(b) and other individuals in the crowd can be heard speaking loudly to each other and at the officers. Specifically: at the 00:14 mark as Lt. Diab is interacting with § 87(2)(b), § 87(2)(b) can be heard stating in a loud voice, “Calm your partner down”, beginning at the 00:20 § 87(2)(b) can be heard saying in reference to Lt. Diab, “Why he behaving like that? He seems like he high on something. He on something. Na look how he moving. Na, he look like he high off of something. He moving like he coked up or something” and also at the 00:41 § 87(2)(b) can be heard saying to § 87(2)(b) “You do not have to provide ID, because you didn’t commit a crime”, and then in reference to Lt. Diab screaming, “He’s on drugs. Yo, what are you doing? What are you doing.”

When Lt. Diab and his partners were interacting with § 87(2)(b), § 87(2)(b) immediately came within an arms distance to Lt. Diab with his arm outstretched and a cell phone in it recording. A large group of individuals also started to gather around the officers also recording the incident while screaming and cursing. Lt. Diab heard people from the crowd calling him a cocaine cop and cursing throughout the incident. Lt. Diab told § 87(2)(b) that it was okay to record

but he had to step back because he cannot be so close to the officers and within their space. For officer and civilian safety, civilians need to stand a few feet distance away from officers as they conduct their investigation. § 87(2)(b) stepped back initially, however, shortly thereafter, § 87(2)(b) came right back and approached closely to the officers. Lt. Diab told him to back up more than two times and that he could record but that he could record from a couple feet away and that he didn't need to be so close. § 87(2)(b) did not back up after several orders and then Lt. Diab asked him for identification. He asked § 87(2)(b) for identification because § 87(2)(b) was going to be issued a Disorderly conduct summons for failure to disperse. § 87(2)(b) started to look for identification but then an individual from the crowd shouted, "You don't have to show him I.D.", so § 87(2)(b) put the identification back. § 87(2)(b) was placed in handcuffs because officers cannot issue a summons to anyone without proper identification because they have to verify the identity of the person, so they had to take § 87(2)(b) back to the 71st Precinct stationhouse. Lt. Diab placed him in handcuffs and walked him to the police vehicle with the assistance of an officer he didn't recall. Lt. Diab was not sure if he took § 87(2)(b)'s phone out of his hands while he was handcuffing him stating that he might have because § 87(2)(b) wouldn't have been able to have the cell phone on him during this time. Lt. Diab didn't recall if he ever had possession of § 87(2)(b)'s cell phone during this incident and stated he never deleted any information from § 87(2)(b)'s cell phone.

Upon viewing the video footage recorded by § 87(2)(b) Lt. Diab stated the video footage did not capture the entirety of the incident and that before the video, § 87(2)(b) had already approached closely to him with his arm extended and cell phone in his face. By the time the video footage started, Lt. Diab had already asked § 87(2)(b) to step back a few times.

§ 87(2)(g) § 87(2)(b) put his phone near Lt. Diab's face as he was recording. § 87(2)(b) stated, 'he could record all he wanted' after Lt. Diab told him to back up. § 87(2)(b) backed up a little bit but it still wasn't enough space and when asked how much space does a civilian need to give an officer, Sgt. Sierra responded, 'at least a forearm's distance' – which § 87(2)(b) did not give to Lt. Diab. § 87(2)(b)'s actions of not moving back when ordered to do so caused the crowd to move even closer to the officers which put the officers' safety at risk. The crowd continued to scream and curse as Lt. Diab interacted with § 87(2)(b) however Sgt. Sierra didn't recall the statements. When § 87(2)(b) was handcuffed, his phone was put into his pants pocket by an officer he didn't recall. Upon viewing the video footage, Sgt. Sierra also stated that the video did not capture initial interaction with Lt. Diab and § 87(2)(b) and that Lt. Diab asked § 87(2)(b) to back up several times before what the video footage captured.

§ 87(2)(g) Det. Boyle articulated that the crowd was loud, aggressive, and saying things along the lines of, "Fuck the police", "You can't fucking do that", and "We know our rights." Upon viewing the video, Det. Boyle also stated the video didn't capture the beginning of the incident.

§ 87(2)(g) § 87(2)(b) did not move at all when Lt. Diab instructed him to get back. PO O'Halloran didn't recall if the video captured the beginning of the incident and PO Thimote was unable to say if it did due to him not being on scene at the start of the incident.

[illegible]

Cell phone footage recorded by § 87(2)(b) captured § 87(2)(b)'s request of Lt. Diab to identify himself. Between 00:00-00:20: § 87(2)(b) approaches Lt. Diab and states, "Officer, can I get your name and badge number? Can I get your name and badge number sir." Lt. Diab walks away towards the police vehicle where PO O'Halloran and § 87(2)(b) are. While still talking to Lt. Diab, who turned his back towards her, § 87(2)(b) states, "Officer can I get your name and badge number?" § 87(2)(b) follows Lt. Diab as he assists § 87(2)(b) into the rear seat, and states, "Hey yo, officer I need your name and badge number please. I need your name your badge number officer." Lt. Diab then looks in § 87(2)(b)'s direction, walks immediately in front of her to the front passenger seat of the police vehicle, and further assists in

securing § 87(2)(b) in the rear seat of the vehicle. Between 00:21- 00:34: § 87(2)(b) states, “You’re ignoring me officer and I’m requesting you to identify yourself officer. Officer I am asking you to give me your badge number and your I.D. and your name, and you’re ignoring me.” Between 00:35-00:40: § 87(2)(b) is secured in the rear seat and Lt. Diab closes the door. He then walks away from the vehicle back towards the sidewalk. § 87(2)(b) who is on the left side of Lt. Diab, follows him. and states, “You arrested a man for videotaping you.” Between 00:50-01:03: While approaching closer to Lt. Diab, § 87(2)(b) states, “Can I have your badge number?” Lt. Diab’s back was facing § 87(2)(b) § 87(2)(b) walked towards the front of Lt. Diab and states, “For the tenth time, Can I have your badge number?” Lt. Diab turns to § 87(2)(b) extends his right arm towards her and states, “Mam, back up. Back up. This is my badge number. Back up.” Lt. Diab held out his gold badge that was hanging from his neck, towards § 87(2)(b) as he stated the aforementioned statement. § 87(2)(b) states, “I asked you ten times. I don’t see nothing.” Lt. Diab then appears to walk past § 87(2)(b) as he is no longer in the video frame. Throughout the video § 87(2)(b) is seen standing very close to Lt. Diab and talking at a loud volume as she is asking Lt. Diab to identify himself.

Initially, Lt. Diab did not recall any civilian asking him for his name and badge number and stated it was a very loud and hectic scene with a lot of people screaming at him. Lt. Diab stated if anyone would have asked him, he would have provided it. However, after viewing the video footage in regards to the section where § 87(2)(b) requested his name and badge number several times in the street, Lt. Diab stated he didn’t respond to her because he didn’t hear her. He was focused on assisting PO O’Halloran secure § 87(2)(b) in the vehicle and therefore didn’t hear § 87(2)(b) Lt. Diab showed § 87(2)(b) his badge while on the sidewalk because he heard her ask for his badge number. Lt. Diab acknowledged that he does not have a badge number and there are no numbers on his badge. Lt. Diab didn’t provide his name at that point because he only heard § 87(2)(b) ask for his badge number.

Det. Boyle, Sgt. Sierra, PO O’Halloran, PO Thimote all testified they did not hear § 87(2)(b) request Lt. Diab’s name or badge number.

Patrol Guide Procedure 203-09 stated that an officer must courteously and clearly state their name, rank, shield number, and command, or otherwise provide them, to anyone who request them to do so. (Board Review 20)

§ 87(2)(g)
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Allegation G: Abuse of Authority: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab damaged § 87(2)(b)'s property.

§ 87(2)(b) was uncooperative with the investigation so the investigation was unable to obtain a sworn statement from him.

There was a black Bluetooth speaker near a tree, in the immediate area of 292 Hawthorne Street during this incident. This speaker was not playing any music during this incident. This speaker was black, 3.5 foot tall, it sat upright on the ground, with wheels at the bottom of it, and with a 'pulley' handle at the top of it similar to a suitcase handle. Lt. Diab walked past § 87(2)(b) as he was telling people to get back, and walked near the speaker - but as he did so, § 87(2)(b) was facing the other officers on scene so her back was towards Lt. Diab. A few seconds later, § 87(2)(b) heard a noise similar to an object falling to the ground, coming from behind her. When § 87(2)(b) turned around she observed the speaker face down on the floor. The speaker was not in that position before Lt. Diab was in that area, and Lt. Diab was the only officer in that area at that time. § 87(2)(b) stated to Lt. Diab, "Yo, why did you kick my speaker over" and Lt. Diab approached § 87(2)(b) and yelled, "Oh, that's you speaker? You got a permit for this; you got a permit for this?" § 87(2)(b) did not recall how § 87(2)(b) responded. § 87(2)(b) grabbed the speaker and when she tried to dislodge the handle so she can walk it, she noticed that the black casing around the handle and the top of the speaker were cracked. The casing was so cracked around where the handle was that when she grabbed the handle and lifted it, the whole handle came off of the speaker. The speaker was not cracked or damaged before the interaction with the police.

As § 87(2)(b) was seated in the rear passenger seat of the police vehicle, he observed Lt. Diab walking amongst the crowd of civilians and saw him kick over a black speaker that was sitting upright on the ground. § 87(2)(b) observed the speaker to fall from its upright position onto the ground. He then observed Lt. Diab enter the vehicle he was in.

Lt. Diab observed a black speaker on the ground near § 87(2)(b) as he was standing in front of 292 Hawthorne Street. § 87(2)(b) stated the speaker belonged to him. Lt. Diab told him to get the speaker out of here and to disperse several times, but § 87(2)(b) refused. Lt. Diab did not recall the speaker ever falling on the ground. Lt. Diab never kicked or pushed over the aforementioned speaker. Lt. Diab never made physical contact with the speaker. Lt. Diab did not recall seeing any damage to a speaker and did not recall hearing any civilian complain about him making contact with the speaker. Lt. Diab observed § 87(2)(b) take the speaker and walk down the block.

Det. Boyle observed a black speaker on the ground that was positioned upright on a wheeled handcart, next to a tree towards the end of the 292 Hawthorne building. The speaker was unsecured. Det. Boyle observed a civilian from the crowd try to take the speaker away by pulling the handcart but, an officer, who Det. Boyle did not recall, grabbed the handcart from this individual and placed the handcart back in an upright position, causing the unsecured speaker to

fall forward onto the ground, near the tree. Det. Boyle did not recall observing Lt. Diab make any physical contact with the speaker, and did not see Lt. Diab kick the speaker over. Det. Boyle did not recall if any civilians complained about Lt. Diab kicking the speaker over. Det. Boyle did not see any damage to the speaker and did not recall what ultimately happened with the speaker when they left the scene.

PO Thimote testified he observed a speaker on scene but didn't see Lt. Diab make any physical contact with it and was never informed if he did so. He never observed any damage to it and did not recall ever observing it fall to the ground.

Both Sgt. Sierra and PO O'Halloran didn't recall if there was a speaker on scene. Neither had any knowledge of Lt. Diab kicking or making physical contact with a speaker on scene.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Allegation H: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab threatened to arrest § 87(2)(b)

Allegation I: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab threatened to arrest Individuals.

Allegation J: Offensive Language: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab made remarks to § 87(2)(b) based upon race.

Allegation K: Offensive Language: At the corner of Nostrand Avenue and Hawthorne Avenue, Lieutenant William Diab made remarks to Individuals based upon race.

After Lt. Diab interacted with § 87(2)(b) he stood on the sidewalk talking to several officers. After a few minutes, § 87(2)(b) heard Lt. Diab tell the officers he was speaking to, "Lock all these niggas up." § 87(2)(b) stated that she was present on scene as well as a few other individuals she refused to identify. Because § 87(2)(b) was present as well as several others, § 87(2)(b) believed Lt. Diab was referring to her as well as the other individuals standing in the area. § 87(2)(b) did not know why Lt. Diab stated that but added that she thought Lt. Diab must have gotten fed up with whole situation. § 87(2)(b) stated no additional person was placed in handcuffs or taken to a police stationhouse. § 87(2)(b) responded to Lt. Diab that he was not locking up anyone and not violating anyone's rights. § 87(2)(b) did not recall Lt. Diab's response. The officers then left the location.

§ 87(2)(b) made no mention that he heard Lt. Diab state, "Lock all these niggas up" during his testimony.

After interacting with § 87(2)(b) Lt. Diab and his officers continued telling the crowd to disperse and continued trying to clear the corner. After a few minutes of doing this, he and his officers left the location and went to the 71st Precinct stationhouse. Lt. Diab did not recall if the crowd was completely dispersed when he and his officers left the scene. Lt. Diab did not have a conversation with his officers in which he stated to them, "Lock all these niggas up." Lt. Diab

stated arresting anyone else on scene was never discussed and he never threatened to arrest anyone. Lt. Diab denied stating the word “nigga”.

Sgt. Sierra, Det. Boyle, PO O’Halloran, and PO Thimote did not hear Lt. Diab stated, “Lock all these niggas up”, and were never informed by any officer that Lt. Diab uttered that statement.

§ 87(2)(g)

§ 87(2)(g)

Allegation L: Inside the 71st Precinct stationhouse, Detective Elijah Boyle strip-searched

§ 87(2)(b)

Upon arrival at the 71st Precinct stationhouse, § 87(2)(b) was walked inside to the front desk, where he was signed into the command log. § 87(2)(b) was then walked to the back of the stationhouse towards the holding cells. Det. Boyle instructed § 87(2)(b) to take out his shoelaces, take off his sneakers, take off his socks, and take off his belt and § 87(2)(b) complied. Det. Boyle then reached inside the front waistband area of § 87(2)(b)s jeans and pulled § 87(2)(b)s jeans away from his body and looked down into the exposed area which was § 87(2)(b)s thermal leggings. Det. Boyle then reached inside the waistband area of § 87(2)(b)s thermal leggings and pulled them away from his body revealing § 87(2)(b)s underwear. As Det. Boyle did this he looked down into that area. Det. Boyle then reached inside the waistband area of § 87(2)(b)s underwear and pulled them away from his body exposing his penis and testicles. Det. Boyle then looked down and observed § 87(2)(b)s penis and testicles for approximately five-ten seconds. Det. Boyle told § 87(2)(b) to put back on his socks and sneakers, and § 87(2)(b) went into the cell.

§ 87(2)(b) was not in a position to observe § 87(2)(b) be lodged into the holding cells by officers.



Snag it video of strp search.mp4

(Board Review 13)

71st Precinct Stationhouse footage captured the entire lodging process of § 87(2)(b). In the video, § 87(2)(b) is the African American male, with the black shirt and black pants and he is interacting with Det. Boyle, PO O’Halloran and PO Thimote in front of the holding cells. § 87(2)(b) is seen taking off his belt, his sneakers, and socks. At the 3:48:06 mark, § 87(2)(b) is seen to stand up from a chair, and then pull down his own pants to his knees, revealing his black thermal leggings. § 87(2)(b) is then seen touching the front of his thermal leggings for a second. He then lifts his pants up back up and is then walked into the holding cells. At no point does any officer enter their

fingers in his waistband and pull his pants away from his body. At no point does any officer look down § 87(2)(b)'s pants.

Det. Boyle testified that upon arrival at the 71st Precinct stationhouse, § 87(2)(b) was checked in at the front desk and then walked to the holding cells where he was searched for weapons and contraband. Det. Boyle never suspected § 87(2)(b) of hiding anything but stated this search was procedure for every prisoner lodged within the holding cells. Det. Boyle stated that an officer, whom he did not recall, put their finger along the edge of § 87(2)(b)'s waistband and went around the whole waist to feel if there were any bulges - no bulges were found. Det. Boyle was not instructed to perform a more invasive search on § 87(2)(b). § 87(2)(b) was told to remove anything that he could harm himself or others with- jewelry, shoelaces, and strings. Det. Boyle also checked if § 87(2)(b) had on any extra layer of clothing – however Det. Boyle didn't recall if § 87(2)(b) had on an extra layer of clothing or any extra layers of pants. Det. Boyle stated that procedurally if a prisoner had on more than one layer of clothing – more than one pair of pants- they would ask the civilian to go to the bathroom and take one of those layers off. However, Det. Boyle did not recall § 87(2)(b) having to do this. Det. Boyle never asked § 87(2)(b) to lower his pants and never pulled the waistband of § 87(2)(b)'s pants away from his body exposing his penis and testicles. Det. Boyle never looked down § 87(2)(b)'s pants and observed his penis and testicles. § 87(2)(b) also never complained of any officer seeing his penis or testicles. After watching the video above, Det. Boyle stated that § 87(2)(b) was never asked to lower his pants and that he didn't recall what appeared in the video to happen. However, Det. Boyle stated that he thought he asked § 87(2)(b) if he had any extra layers of clothing and § 87(2)(b) just decided on his own to pull down his pants and show the officers what he had on underneath. Det. Boyle reiterated that when prisoners are wearing multiple layers it is NYPD Procedure that the officers have to make sure there aren't any strings in that layer as well. Det. Boyle stated that § 87(2)(b) was showing them that his second layer of pants had no strings in them.

§ 87(2)(g) Upon watching the video above both officers testified that § 87(2)(b) pulled down his own pants and § 87(2)(b) was showing them that his second layer of pants didn't have any bulges or strings in them. Both officers stated that it was procedure to make sure that none of § 87(2)(b)'s clothing had any strings in them.

Sgt. Sierra and Lt. Diab both testified that they did not instruct any officer to perform a strip search on § 87(2)(b). Both officers testified that they have no knowledge of a strip search being conducted on § 87(2)(b) and have no knowledge of any officer pulling § 87(2)(b)'s pants back and looking down onto his penis and testicles.

§ 87(2)(g) While § 87(2)(b) claimed that Det. Boyle reached inside his waistband, pulled back, and looked down his pants, Det. Boyle denied this. The other officers who would have been able to observe this also deny this happening to § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to three CCRB complaints and has been named a victim in eleven allegations.
 - § 87(2)(b)
 -
 -
 -
- § 87(2)(b) has been a party to four CCRB complaints and has been named a victim in seven allegations.
 - § 87(2)(b)
 -
- Lt. Diab has been a member of service for twelve years and has been a subject in sixteen CCRB complaints and thirty-nine allegations, of which three were substantiated.
 - 200800389 involved substantiated allegations of physical force and discourteous action against Lt. Diab. The Board recommended Charges and the NYPD imposed a forfeiture of thirty-five vacation days.
 - 201507839 involved substantiated allegations of a stop against Lt. Diab. The Board recommended Formalized Training and the NYPD has not yet imposed discipline.
- Det. Boyle has been a member of service for seven years and has been a subject in four case sand six allegations none of which have been substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- On September 28, 2018, a request was made determine if a Notice of Claim was filed in regards to this incident. Confirmation from the Office of the New York City Comptroller will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c)

- § 87(2)(b), § 87(2)(c) [Redacted]

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date